

## Appendix F

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### Title 18—Crimes and Criminal Procedure, U.S. Code

#### Part I—Crimes

#### Chapter 113—Stolen Property

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#### § 2318 · *Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging*<sup>1</sup>

(a) Whoever, in any of the circumstances described in subsection (c), knowingly traffics in—

(1) a counterfeit label or illicit label affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany—

(A) a phonorecord;

(B) a copy of a computer program;

(C) a copy of a motion picture or other audiovisual work;

(D) a copy of a literary work;

(E) a copy of a pictorial, graphic, or sculptural work;

(F) a work of visual art; or

(G) documentation or packaging; or

(2) counterfeit documentation or packaging, shall be fined under this title or imprisoned for not more than 5 years, or both.

(b) As used in this section—

(1) the term “counterfeit label” means an identifying label or container that appears to be genuine, but is not;

(2) the term “traffic” means to transport, transfer or otherwise dispose of, to another, as consideration for anything of value or to make or obtain control of with intent to so transport, transfer or dispose of;

(3) the terms “copy”, “phonorecord”, “motion picture”, “computer program”, “audiovisual work”, “literary work”, “pictorial, graphic, or sculptural work”, “sound recording”, “work of visual art”, and “copyright owner” have, respectively, the meanings given those terms in section 101 (relating to definitions) of title 17;

(4) the term “illicit label” means a genuine certificate, licensing document, registration card, or similar labeling component—

(A) that is used by the copyright owner to verify that a phonorecord, a copy of a computer program, a copy of a motion picture or other audiovisual work, a copy of a literary work, a copy of a pictorial, graphic, or sculptural work, a work of visual art, or documentation or packaging is not counterfeit or infringing of any copyright; and

(B) that is, without the authorization of the copyright owner —

(i) distributed or intended for distribution not in connection with the copy, phonorecord, or work of visual art to which such labeling component was intended to be affixed by the respective copyright owner; or

(ii) in connection with a genuine certificate or licensing document, knowingly falsified in order to designate a higher number of licensed users or copies than authorized by the copyright owner, unless that certificate or document is used by the copyright owner solely for the purpose of monitoring or tracking the copyright owner's distribution channel and not for the purpose of verifying that a copy or phonorecord is noninfringing;

(5) the term “documentation or packaging” means documentation or packaging, in physical form, for a phonorecord, copy of a computer program, copy of a motion picture or other audiovisual work, copy of a literary work, copy of a pictorial, graphic, or sculptural work, or work of visual art; and

(6) the term “counterfeit documentation or packaging” means documentation or packaging that appears to be genuine, but is not.

(c) The circumstances referred to in subsection (a) of this section are —

(1) the offense is committed within the special maritime and territorial jurisdiction of the United States; or within the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49);

(2) the mail or a facility of interstate or foreign commerce is used or intended to be used in the commission of the offense;

(3) the counterfeit label or illicit label is affixed to, encloses, or accompanies, or is designed to be affixed to, enclose, or accompany —

(A) a phonorecord of a copyrighted sound recording or copyrighted musical work;

(B) a copy of a copyrighted computer program;

(C) a copy of a copyrighted motion picture or other audiovisual work;

(D) a copy of a literary work;

(E) a copy of a pictorial, graphic, or sculptural work;

(F) a work of visual art; or

(G) copyrighted documentation or packaging; or

(4) the counterfeited documentation or packaging is copyrighted.

(d) When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all counterfeit labels or illicit labels and all articles to which counterfeit labels or illicit labels have been affixed or which were intended to have had such labels affixed and of any equipment, device, or material used to manufacture, reproduce, or assemble the counterfeit labels or illicit labels.

(e) Except to the extent they are inconsistent with the provisions of this title, all provisions of section 509, title 17, United States Code, are applicable to violations of subsection (a).

(f) CIVIL REMEDIES. —

(1) IN GENERAL. — Any copyright owner who is injured, or is threatened with injury, by a violation of subsection (a) may bring a civil action in an appropriate United States district court.

(2) DISCRETION OF COURT. — In any action brought under paragraph (1), the court —

(A) may grant 1 or more temporary or permanent injunctions on such terms as the court determines to be reasonable to prevent or restrain a violation of subsection (a);

(B) at any time while the action is pending, may order the impounding, on such terms as the court determines to be reasonable, of any article that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation of subsection (a); and

(C) may award to the injured party —

(i) reasonable attorney fees and costs; and

(ii)(I) actual damages and any additional profits of the violator, as provided in paragraph (3); or

(II) statutory damages, as provided in paragraph (4).

(3) ACTUAL DAMAGES AND PROFITS. —

(A) IN GENERAL. — The injured party is entitled to recover —

(i) the actual damages suffered by the injured party as a result of a violation of subsection (a), as provided in subparagraph (B) of this paragraph; and

(ii) any profits of the violator that are attributable to a violation of subsection (a) and are not taken into account in computing the actual damages.

(B) CALCULATION OF DAMAGES. — The court shall calculate actual damages by multiplying —

(i) the value of the phonorecords, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging, by

(ii) the number of phonorecords, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging.

(C) DEFINITION. — For purposes of this paragraph, the “value” of a phonorecord, copy, or work of visual art is —

(i) in the case of a copyrighted sound recording or copyrighted musical work, the retail value of an authorized phonorecord of that sound recording or musical work;

(ii) in the case of a copyrighted computer program, the retail value of an authorized copy of that computer program;

(iii) in the case of a copyrighted motion picture or other audiovisual work, the retail value of an authorized copy of that motion picture or audiovisual work;

(iv) in the case of a copyrighted literary work, the retail value of an authorized copy of that literary work;

(v) in the case of a pictorial, graphic, or sculptural work, the retail value of an authorized copy of that work; and

(vi) in the case of a work of visual art, the retail value of that work.

(4) STATUTORY DAMAGES. — The injured party may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for each violation of subsection (a) in a sum of not less than \$2,500 or more than \$25,000, as the court considers appropriate.

(5) SUBSEQUENT VIOLATION. — The court may increase an award of damages under this subsection by 3 times the amount that would otherwise be awarded, as the court considers appropriate, if the court finds that a person has subsequently violated subsection (a) within 3 years after a final judgment was entered against that person for a violation of that subsection.

(6) LIMITATION ON ACTIONS. — A civil action may not be commenced under section unless it is commenced within 3 years after the date on which the claimant discovers the violation of subsection (a).

### § 2319 · *Criminal infringement of a copyright*<sup>2</sup>

(a) Any person who violates section 506(a) (relating to criminal offenses) of title 17 shall be punished as provided in subsections (b), (c), and (d) and such penalties shall be in addition to any other provisions of title 17 or any other law.

(b) Any person who commits an offense under section 506 (a)(1)(A) of title 17—

(1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, including by electronic means, during any 180-day period, of at least 10 copies or phonorecords, of 1 or more copyrighted works, which have a total retail value of more than \$2,500;

(2) shall be imprisoned not more than 10 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and

- (3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, in any other case.
- (c) Any person who commits an offense under section 506(a)(1)(B) of title 17—
- (1) shall be imprisoned not more than 3 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 10 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of \$2,500 or more;
  - (2) shall be imprisoned not more than 6 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and
  - (3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000.
- (d) Any person who commits an offense under section 506(a)(1)(C) of title 17—
- (1) shall be imprisoned not more than 3 years, fined under this title, or both;
  - (2) shall be imprisoned not more than 5 years, fined under this title, or both, if the offense was committed for purposes of commercial advantage or private financial gain;
  - (3) shall be imprisoned not more than 6 years, fined under this title, or both, if the offense is a second or subsequent offense; and
  - (4) shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a second or subsequent offense under paragraph (2).
- (e) (1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.
- (2) Persons permitted to submit victim impact statements shall include—
- (A) producers and sellers of legitimate works affected by conduct involved in the offense;
  - (B) holders of intellectual property rights in such works; and
  - (C) the legal representatives of such producers, sellers, and holders.
- (f) As used in this section—
- (1) the terms “phonorecord” and “copies” have, respectively, the meanings set forth in section 101 (relating to definitions) of title 17;
  - (2) the terms “reproduction” and “distribution” refer to the exclusive rights of a copyright owner under clauses (1) and (3) respectively of section 106 (relating to exclusive rights in copyrighted works), as limited by sections 107 through 122, of title 17;

(3) the term “financial gain” has the meaning given the term in section 101 of title 17; and

(4) the term “work being prepared for commercial distribution” has the meaning given the term in section 506(a) of title 17.

**§ 2319A · *Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances*<sup>3</sup>**

(a) OFFENSE. — Whoever, without the consent of the performer or performers involved, knowingly and for purposes of commercial advantage or private financial gain—

(1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation;

(2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance; or

(3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States;

shall be imprisoned for not more than 5 years or fined in the amount set forth in this title, or both, or if the offense is a second or subsequent offense, shall be imprisoned for not more than 10 years or fined in the amount set forth in this title, or both.

(b) FORFEITURE AND DESTRUCTION. — When a person is convicted of a violation of subsection (a), the court shall order the forfeiture and destruction of any copies or phonorecords created in violation thereof, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such copies or phonorecords may be made. The court may also, in its discretion, order the forfeiture and destruction of any other equipment by means of which such copies or phonorecords may be reproduced, taking into account the nature, scope, and proportionality of the use of the equipment in the offense.

(c) SEIZURE AND FORFEITURE. — If copies or phonorecords of sounds or sounds and images of a live musical performance are fixed outside of the United States without the consent of the performer or performers involved, such copies or phonorecords are subject to seizure and forfeiture in the United States in the same manner as property imported in violation of the customs laws. The Secretary of the Treasury shall, not later than 60 days after the date of the enactment of the Uruguay Round Agreements Act, issue regulations to carry out this subsection, including regulations by which any performer may, upon payment of a specified fee, be entitled to notification by the United States Customs Service of the importation of copies or phonorecords that appear to consist of unauthorized fixations of the sounds or sounds and images of a live musical performance.

(d) VICTIM IMPACT STATEMENT. —

(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Persons permitted to submit victim impact statements shall include—

(A) producers and sellers of legitimate works affected by conduct involved in the offense;

(B) holders of intellectual property rights in such works; and

(C) the legal representatives of such producers, sellers, and holders.

(e) DEFINITIONS. — As used in this section—

(1) the terms “copy”, “fixed”, “musical work”, “phonorecord”, “reproduce”, “sound recordings”, and “transmit” mean those terms within the meaning of title 17; and

(2) the term “traffic in” means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent to transport, transfer, or dispose of.

(f) APPLICABILITY. — This section shall apply to any Act or Acts that occur on or after the date of the enactment of the Uruguay Round Agreements Act.<sup>4</sup>

**§ 2319B · *Unauthorized recording of Motion pictures in a Motion picture exhibition facility***<sup>5</sup>

(a) OFFENSE. — Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall—

(1) be imprisoned for not more than 3 years, fined under this title, or both; or

(2) if the offense is a second or subsequent offense, be imprisoned for no more than 6 years, fined under this title, or both.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in any proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient to support a conviction of that person for such offense.

(b) FORFEITURE AND DESTRUCTION. — When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.

(c) **AUTHORIZED ACTIVITIES.**— This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or by a person acting under a contract with the United States, a State, or a political subdivision of a State.

(d) **IMMUNITY FOR THEATERS.**— With reasonable cause, the owner or lessee of a motion picture exhibition facility where a motion picture or other audiovisual work is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture or other audiovisual work being exhibited, or the agent or employee of such licensor—

(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section with respect to that motion picture or audiovisual work for the purpose of questioning or summoning a law enforcement officer; and

(2) shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).

(e) **VICTIM IMPACT STATEMENT.**—

(1) **IN GENERAL.**— During the preparation of the presentence report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) **CONTENTS.**— A victim impact statement submitted under this subsection shall include—

(A) producers and sellers of legitimate works affected by conduct involved in the offense;

(B) holders of intellectual property rights in the works described in subparagraph (A); and

(C) the legal representatives of such producers, sellers, and holders.

(f) **STATE LAW NOT PREEMPTED.**— Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

(g) **DEFINITIONS.**— In this section, the following definitions shall apply:

(1) **TITLE 17 DEFINITIONS.**— The terms “audiovisual work”, “copy”, “copyright owner”, “motion picture”, “motion picture exhibition facility”, and “transmit” have, respectively, the meanings given those terms in section 101 of title 17.

(2) **AUDIOVISUAL RECORDING DEVICE.**— The term “audiovisual recording device” means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

## Appendix F · Endnotes

1. In 1962, section 2318, entitled “Transportation, sale, or receipt of phonograph records bearing forged or counterfeit labels,” was added to title 18 of the *United States Code*. Pub. L. No. 87-773, 76 Stat. 775. In 1974, section 2318 was amended to change the penalties. Pub. L. No. 93-573, 88 Stat. 1873. The Copyright Act of 1976 revised section 2318 with an amendment in the nature of a substitute. Pub. L. No. 94-553, 90 Stat. 2541, 2600. The Piracy and Counterfeiting Amendments Act of 1982 again revised section 2318 with an amendment in the nature of a substitute that included a new title, “Trafficking in counterfeit labels for phonorecords, and copies of motion pictures or other audiovisual works.” Pub. L. No. 97-180, 96 Stat. 91. The Crime Control Act of 1990 made a technical amendment to section 2318 to delete the comma after “phonorecords” in the title. Pub. L. No. 101-647, 104 Stat. 4789, 4928. In 1994, section 2318(c)(1) was amended by inserting “section 46501 of title 49” in lieu of “section 101 of the Federal Aviation Act of 1958. Pub. L. No. 103-272, 108 Stat. 745, 1374. The Violent Crime Control and Law Enforcement Act of 1994 amended section 2318(a) by inserting “under this title” in lieu of “not more than \$250,000.” Pub. L. No. 103-322, 108 Stat. 1796, 2148. (As provided in 18 USC §3571, the maximum fine for an individual is \$250,000, and the maximum fine for an organization is \$500,000.)

The Anticounterfeiting Consumer Protection Act of 1996 amended section 2318 by changing the title, by amending subsection (a) to insert “a computer program or documentation” through to “knowingly traffics in counterfeit documentation or packaging for a computer program” in lieu of “a motion picture or other audiovisual work” and by amending subsection (b)(3) to insert “computer program” after “motion picture.” Pub. L. No. 104-153, 110 Stat. 1386. The Act also amended section 2318(c) by inserting “a copy of a copyrighted computer program or copyrighted documentation or packaging for a computer program” into paragraph (3) and by adding paragraph (4). *Id.* at 1387.

The Anti-counterfeiting Amendments Act of 2004 amended section 2318 by changing its title, by amending subsection 2318(a) in its entirety; and by amending paragraph 2318(c)(3) in its entirety. Pub. L. No. 108-482, 118 Stat. 3912-3913. It amended paragraph 2318(c)(4) by deleting “for a computer program” after “packaging.” *Id.* at 3914. It amended subsection 2318(d) by inserting “or illicit labels” after “counterfeit labels,” wherever it appears and by inserting the text at the end of the sentence, after “such labels affixed.” *Id.* The Act also added a new subsection (f). *Id.*

2. The Piracy and Counterfeiting Amendments Act of 1982 added section 2319 to title 18 of the *United States Code*. This section was entitled “Criminal infringement of a copyright.” Pub. L. No. 97-180, 96 Stat. 91, 92. In 1992, section 2319 was amended by substituting a new subsection (b), by deleting “sound recording,” “motion picture” and “audiovisual work” from subsection (c)(1) and by substituting “120” for “118” in subsection (c)(2). Pub. L. No. 102-561, 106 Stat. 4233. In 1997, a technical amendment corrected the spelling of “last” in subsection (b)(1) to “least.” Pub. L. No. 105-80, 111 Stat. 1529, 1536.

In 1997, the No Electronic Theft Act amended section 2319 of title 18 as follows: 1) in subsection (a) by inserting “and (c)” after “subsection (b),”; 2) in subsection (b), in the matter preceding paragraph (1), by inserting “section 506(a)(1) of title 17” in lieu of “subsection (a) of this section,”; 3) in subsection (b)(1) by inserting “including by electronic means” and by

inserting “which have a total retail value” in lieu of “with a retail value,” 4) by redesignating subsection (c) as subsection (e); and 5) by adding new subsections (c) and (d). Pub. L. No. 105-147, 111 Stat. 2678. The Act also directed the United States Sentencing Commission to “ensure that the applicable guideline range for a defendant convicted of a crime against intellectual property . . . is sufficiently stringent to deter such a crime” and to “ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the crime against intellectual property was committed.” *Id.* See also endnote 4, chapter 5, *supra*.

The Intellectual Property and High Technology Technical Amendments Act of 2002 amended paragraph (2) of section 2319(e) by substituting sections “107 through 122” for “107 through 120.” Pub. L. No. 107-273, 116 Stat. 1758, 1910.

The Artists’ Rights and Theft Prevention Act of 2005 amended the beginning of the first sentence of 5 U.S.C. 2319(a) by substituting “Any person who” in lieu of “Whoever.” Pub. L. No. 109-9, 119 Stat. 218, 220-221. It amended subsection 2319(a) by substituting “subsections (b), (c) and (d)” in lieu of “subsections (b) and (c).” *Id.* at 221. It amended the first line of subsection 2319(b) by inserting “section 506(a)(1)(A)” in lieu of “section 506(a)(1).” *Id.* The Act amended the first line of subsection 2319(c) by inserting “section 506(a)(1)(B) of title 17” in lieu of “section 506(a)(2) of title 17, United States Code.” *Id.* It also amended subsection (e) by adding a new paragraph (3). *Id.* Finally, the Act amended section 2319 by adding a new subsection (d) and redesignating the following subsections accordingly, as (e) and (f). *Id.*

3. In 1994, the Uruguay Round Agreements Act added section 2319A to title 18 of the *United States Code*. This section was entitled “Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances.” Pub. L. No. 103-465, 108 Stat. 4809, 4974. In 1997, the No Electronic Theft Act amended section 2319A by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by adding subsection (d). Pub. L. No. 105-147, 111 Stat. 2678. See also endnote 2, *supra*, regarding the United States Sentencing Commission.

4. The Uruguay Round Agreements Act was enacted on December 8, 1994.

5. The Artists’ Rights and Theft Prevention Act of 2005 added a new section 2319B to title 5 of the *United States Code*. Pub. L. No. 109-9, 119 Stat. 218.6.